

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHSHORE SHEET METAL, INC.,

Plaintiff,

v.

SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION, LOCAL  
66,

Defendant.

No. 2:15-CV-01349 MJP

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION TO QUASH  
OR MODIFY SUBPOENAS DUCES  
TECUM**

**NOTED ON MOTION CALENDAR:**

**January 8, 2016**

**RELIEF REQUESTED**

Defendant Sheet Metal Workers International Association, Local 66 ("Local 66") requests the Court deny Northshore Sheet Metal, Inc.'s ("Northshore") Motion to Quash or Modify Subpoenas Duces Tecum ("Motion"). Local 66 is properly seeking information necessary to determine liability and damages in the above-captioned matter and has agreed to sign the model protective order ("Model Order"). The Court should therefore deny Northshore's Motion.

DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION TO QUASH OR  
MODIFY SUBPOENAS DUCES TECUM  
2:15-CV-01349 MJP - 1

LAW OFFICES OF  
Robblee Detwiler & Black  
2101 FOURTH AVENUE, SUITE 1000  
SEATTLE, WA 98121  
(206) 467.6700 • FAX (206) 467-7589

1 **STATEMENT OF FACTS**

2 Northshore is an architectural sheet metal company based in Everett, Washington. Local  
3 66 represents Northshore's bargaining-unit employees. The parties' collective bargaining  
4 agreement ("CBA") expired on June 1, 2015. (Carter Decl. ¶ 2). Upon expiration of the CBA,  
5 Local 66 had the right to strike Northshore. (Id.). The parties began bargaining for a successor  
6 CBA on May 12, 2015. (Carter Decl. ¶ 3). During the bargaining session on May 25, 2015, the  
7 Business Manager for Local 66, Tim Carter, explicitly stated that he would not agree to  
8 Northshore's request to an extension of the CBA because Local 66 would not waive its right to  
9 strike. (Carter Decl. ¶ 4). Subsequently, on August 20, 2015, Local 66 went on strike and  
10 remains engaged in a lawful strike against Northshore to this day. (Burnham Decl. ¶ 3).<sup>1</sup>

11 In conjunction with filing unsuccessful Unfair Labor Practice charge with the National  
12 Labor Relations Board, Northshore also filed this suit against Local 66. (Dkt. #1). Within its  
13 First Amended Complaint, Northshore stated that the purpose of Local 66's pickets was to "force  
14 Mortenson Construction, GLY Construction, Lease Crutcher Lewis, and other general  
15 contractors and customers to cease doing business with Northshore." (Dkt. #24).

16 On October 26, 2015, the parties participated in the 26(f) conference. (Hutzenbiler Decl.  
17 ¶ 3). During that conversation, Northshore's counsel stated he thought a protective order was  
18 needed, but did not provide a draft protective order. (Id.). Local 66's counsel informed  
19 Northshore's counsel that Local 66 would consider a protective order once Northshore provided  
20 a draft. (Id.).

21 On October 27, 2015, Local 66 issued subpoenas to Mortenson Construction  
22 ("Mortenson"), GLY Construction, Inc. ("GLY"), and Lease Crutcher Lewis. (Burnham Decl. ¶  
23 4). Only Mortenson responded. (Id.). Due to an inadvertent clerical error, the notification letter  
24

25 <sup>1</sup> On November 30, 2015, the NLRB issued a decision finding that Local 66's strike is lawful.

1 to Northshore's counsel was not sent. (Burnham Decl. ¶ 5). Subsequently, on December 1, 2015,  
2 Northshore's counsel notified Local 66's counsel that he had not received notice of the  
3 subpoenas and demanded they be rescinded. (Burnham Decl. ¶ 6). At this point, Local 66's  
4 counsel became aware that the notification letter was unintentionally not sent to Northshore's  
5 counsel. (Id.). Thereafter, Local 66's counsel rectified the situation by notifying Mortenson that  
6 the subpoena was void and returned all responsive documents. (Burnham Decl. ¶ 7, Ex. A).

7 On December 3, 2015, Local 66's counsel provided Northshore's counsel with copies of  
8 the subpoenas it intended to reissue the following day. (Burnham Decl. ¶ 8, Ex. B). Northshore's  
9 counsel requested the subpoenas not be issued until a protective order was in place, but still had  
10 not provided Local 66 with a draft protective order. (Burnham Decl. ¶ 9). Local 66's counsel  
11 asked for the basis of the protective order and again requested a draft of a proposed protective  
12 order. (Id.) Northshore's counsel made vague claims that the information being sought in the  
13 subpoenas would contain confidential, business proprietary, and pricing information. (Burnham  
14 Decl. ¶ 10, Ex. B). Northshore's counsel also informed that it was planning to ask "the  
15 subpoenaed parties to refrain from producing any documents until Northshore has had the  
16 opportunity to protect [its] information." (Burnham Decl. ¶ 11, Ex. B). As Northshore's counsel  
17 failed to provide a draft protective order or identify which information it felt was proprietary,  
18 Local 66 issued the subpoenas on December 4, 2015. (Burnham Decl. ¶ 12).

19 Northshore did not provide Local 66 with a proposed protective order ("Proposed Order")  
20 until December 17, 2015, nearly two (2) months after Local 66 had requested a draft.  
21 (Hutzenbiler Decl. ¶ 4). On December 22, 2015, the parties held a 26(i) phone conference to  
22 discuss Northshore's Proposed Order. (Hutzenbiler Decl. ¶ 5). Local 66's counsel believes that  
23 the "ATTORNEY EYES ONLY" section and related subsections will impede on Local 66's  
24 ability to prepare its case. (Id.). The additional sections effectively require Local 66's counsel to  
25 not freely share information with Local 66 and divulge attorney work product/mental

1 impressions to Northshore's counsel each time Local 66's counsel has to ask for permission to  
2 share information with his client. (Id.).

3 Moreover, adding the sections will cause delay in conducting discovery and will  
4 inevitably lead to discovery disputes. (Id.). Northshore's only stated reason for adding the  
5 additional sections was its concern that Local 66 will somehow use the materials provided in  
6 discovery to help Northshore's competitors. (Hutzenbiler Decl. ¶ 6). Local 66's counsel  
7 explained that under the Model Order, the parties would be required to maintain confidentiality  
8 of all such documents and the "ATTORNEY EYES ONLY" sections and related subsections are  
9 duplicative and unnecessary. (Hutzenbiler Decl. ¶ 7). Local 66's counsel informed Northshore's  
10 counsel that Local 66 is agreeable to the Model Order, but not Northshore's Proposed Order that  
11 includes the additional sections. (Hutzenbiler Decl. ¶ 8).

12 The subpoenas seek the following information from Mortenson, GLY, and Lease  
13 Crutcher Lewis: 1) all correspondence between Northshore and the third party contractor from  
14 May 1, 2015 to the present; 2) all correspondence to or from the third party contractor about  
15 Northshore from May 1, 2015 to the present; and 3) all contracts entered into between  
16 Northshore and the third party contractor relating to projects that were started or ongoing from  
17 May 1, 2015 to the present. (Burnham Decl. ¶ 12, Ex. C). Local 66 received objections only  
18 from GLY on December 30, 2015, long past the fourteen (14) day objection deadline. (Burnham  
19 Decl. ¶ 13). Local 66 sent GLY a letter informing them that GLY's objections were untimely and  
20 therefore waived. (Id., Ex. D). The date of compliance for the subpoenas was January 4, 2016.  
21 (Burnham Decl. ¶ 12, Ex. C). To date, Local 66 has not received a response from Mortenson,  
22 GLY, or Lease Crutcher Lewis. (Burnham Decl. ¶ 14).

23 //

24  
25 //

1 **AUTHORITY**

2 **1. Northshore Lacks Standing To Assert Undue Burden, Overbreadth, And**  
3 **Harassment In Regards to Third-Party Subpoenas.**

4 The Court should deny Northshore's Motion to Quash because Northshore lacks standing  
5 to quash or modify the subpoenas on the grounds that they are overbroad, unduly burdensome,  
6 and harassing, given that the third party general contractors did not object, or waived objection,  
7 to the subpoenas.<sup>2</sup> See Ford Glob. Techs., LLC v. New World Int'l, Inc., No. C15-1329JLR, 2015  
8 U.S. Dist. LEXIS 145775, at 7-8 (W.D. Wash. Oct. 27, 2015) ("As an initial matter, because  
9 Amazon has not objected to the Subpoena as modified, Defendants lack standing to quash or  
10 modify the Subpoena on the grounds that the Subpoena is overbroad or seeks irrelevant  
11 information."); Wells Fargo and Co. v. ABD Ins., et al., 2012 U.S. Dist. LEXIS 173365, 2012  
12 WL 6115612, at 2 (N.D.Cal. Dec. 10, 2012) ("A party's objection that a third-party subpoena  
13 seeks irrelevant information or would impose an undue burden are not grounds on which a party  
14 has standing to move to quash a subpoena when the non-party has not objected."). Objections  
15 unrelated to a claim of privilege or privacy interest are not proper bases upon which a party may  
16 quash a subpoena. Ford Glob. Techs., at 7-8 ("Defendants' only cognizable basis for quashing  
17 the Subpoena is that it seeks privileged and/or confidential information"). See also Oliver B.  
18 Cannon & Son, Inc. v. Fidelity & Cas. Co. of New York, 519 F. Supp. 668, 680 (D.C. Del. 1981)  
19 (movant lacks standing to raise objections unrelated to any right of privilege).

20 On December 4, 2015, Local 66 issued subpoenas to third party general contractors  
21 seeking relevant information and documents. Local 66 did not receive objections from any  
22 contractor except GLY, whose objections were untimely and therefore waived. Burnham Decl. ¶  
23 13; Fed. R. Civ. P. 45. As no valid objections were raised by the third party general contractors,

24 \_\_\_\_\_  
25 <sup>2</sup> GLY made untimely objections Local 66's subpoena on December 30, 2015. As the objections were  
untimely, they are waived. See Moon v SCP Pool Corp. 232 FRD 633 (C.D. Cal. 2005).

1 Northshore's only cognizable basis for quashing the subpoena is that it seeks privileged and/or  
2 confidential information. Northshore's additional claims of undue burden, overbreadth, and  
3 harassment should be dismissed as they are improperly asserted on behalf of the third party  
4 general contractors who did not file valid objections to Local 66's subpoenas.

5 **2. Local 66 Is Seeking Information That Is Likely To Lead To The Discovery Of**  
6 **Admissible Evidence.**

7 Local 66 is seeking information that is directly relevant to this case. Under Federal Rule  
8 of Civil Procedure ("FRCP") 45, any party may serve a subpoena on a nonparty ordering the  
9 production of certain documents. Fed. R. Civ. P. 45(a)(1)(A)(iii). Under FRCP 26(b), litigants  
10 may obtain discovery regarding "any non privileged matter that is relevant to any party's claim or  
11 defense." Fed. R. Civ. P. 26(b)(1). Because discovery is broad in scope and biased toward  
12 discovery, discovery requests need only be "reasonably calculated to lead to the discovery of  
13 admissible evidence." *Id.* The broad right of discovery is based on the general principle that  
14 litigants have a right to "every man's evidence," United States v. Bryan, 339 U.S. 323, 331  
15 (1950), and that wide access to relevant facts serves the integrity and fairness of the judicial  
16 process by promoting the search for the truth. Shoen v. Shoen, 5 F.3d 1289, 1292 (9th Cir. 1993).  
17 District courts have broad discretion in determining relevancy for discovery purposes. Hallett v.  
18 Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

19  
20 Northshore's allegation that Local 66's subpoenas are "merely a fishing expedition that is  
21 not aimed at the claims and defenses in this lawsuit" is baseless and unequivocally false. Local  
22 66 is properly seeking discovery dating back to May 2015 from third party general contractors  
23 that will likely lead to admissible evidence relating to Local 66's liability (if any) and  
24 Northshore's damages (if any).

1 It is reasonable to assume that as the expiration of the CBA was approaching on June 1,  
2 2015, Northshore informed its current and future general contractors about the possibility of  
3 strike by Local 66. Further, at the May 25, 2015 bargaining session, Local 66 Business Manager  
4 Tim Carter explicitly informed Northshore's ownership that Local 66 would not waive its right  
5 to strike by agreeing to a contract extension. Local 66 is seeking information from the general  
6 contractors listed in Northshore's complaint because it is reasonable to assume that Northshore  
7 and those contractors may have been planning, in May, with how to deal with a strike. This  
8 would include, for example, possible changes in Northshore's shifts and/or removing Northshore  
9 from projects. This information directly relates to Local 66's liability, as Local 66 believes  
10 Northshore may have been scheduled differently and/or removed due to primary picketing  
11 activity, and therefore Local 66 is not liable for any resulting damages. It would also be  
12 expected that that individual employees of the third party general contractors would be talking  
13 about plans as to how to respond to a strike. Moreover, communications unrelated directly to the  
14 strike, such as Northshore's performance, will directly relate to liability and damages.

16 Furthermore, Northshore is misrepresenting its own belief regarding what timeframe is  
17 relevant by claiming in its Motion that "the Union has failed to limit the subpoenas to a  
18 reasonable time frame. The information sought includes a timeframe covering several months  
19 before the Union's strike activity." Ex. E. One week prior to making this assertion, Northshore  
20 issued discovery to Local 66 that requested documents and information from June 1, 2015  
21 onward. Northshore's allegation that Local 66 has not properly limited the scope of the  
22 subpoenas is directly contradicted by Northshore's own discovery requests to Local 66.  
23 Northshore issued discovery to Local 66 requesting documents dating back to June 1, 2015,  
24 indicating that Northshore understands that documents from well before the actual strike  
25

1 occurred are relevant to this matter.<sup>3</sup> Local 66's requests are directly relevant to the proceedings  
2 at hand.

3 **3. Northshore Is Impeding On Local 66's Ability To Conduct Discovery.**

4 The Court should also deny Northshore's Motion because it is improperly interfering  
5 with discovery. It can be reasonably inferred that Northshore instructed the subpoenaed  
6 contractors to not comply with the subpoenas before a protective order was entered, therefore  
7 improperly impeding the discovery process. FRCP 45 vests a party's attorney with the authority  
8 to compel production of documents or require the appearance of a non-party as described in the  
9 subpoena. Fed. R. Civ. P. 45(a)(1)(C)-(D). "Nowhere in the Rule is it contemplated that the  
10 adversary of the party seeking the information may advise, no matter the reasons, the person  
11 commanded by the subpoena to produce the information to ignore the subpoena's command."  
12 Lofton v. Verizon Wireless (VAW) LLC, 308 F.R.D. 276, 290 (N.D. Cal. 2015) (quoting Price  
13 v. Trans Union, L.L.C., 847 F. Supp. 2d 788, 794 (E.D. Pa. 2012)).<sup>4</sup>

14 It can be reasonably inferred that Northshore advised the third party general contractors  
15 to not comply with Local 66's subpoenas. On December 3, 2015, Northshore's counsel  
16 informed Local 66 that it intended to ask "the subpoenaed parties to refrain from producing any  
17 documents until Northshore has had the opportunity to protect [its] information." (Burnham  
18 Decl. ¶ 11, Ex. B). To date, Local 66 has not received any of the subpoenaed documents from  
19 the third party general contractors or any valid objections. (Burnham Decl. ¶ 14). It appears that  
20

---

21 <sup>3</sup> Although Northshore lacks standing to object to the breadth of the third party subpoenas, it should be noted  
22 that its discovery requests are essentially asking for the same breadth of documents. For example, Northshore's  
23 Request for Production No. 6 states, "Please provide copies of all Documents in Your possession, custody or control  
24 that You sent to any individual or entity (including general contractors, subcontractors, businesses, local or  
international unions, etc.) that refer, relate to or regard the Strike Action against Northshore." Ex. E. Local 66 is  
also seeking information relating to other job sites based on Northshore's vague claims of damages at "other job  
sites" in its First Amended Complaint. Dkt. # 24.

25 <sup>4</sup> In such scenarios, courts have sanctioned the party who unlawfully advised the third party to not comply  
with the subpoena. See Fox Indus., Inc. v. Gurovich, No. 03-5166, 2006 U.S. Dist. LEXIS 73035, 2006 WL  
2882580, at 2 (E.D.N.Y. Oct. 6, 2006) (exercising its inherent authority to sanction defendant to the tune of \$1,000  
per letter for sending third party subpoena subjects letters advising them not to comply with plaintiff's subpoenas).



1 Northshore's counsel contacted the third party general contractors as he stated he would, and  
2 requested they not respond to the properly issued discovery in contravention of FRCP 45. The  
3 Court should reject Northshore's improper attempt to impede Local 66's ability to conduct  
4 discovery.

5 **4. Local 66 Agreed To Sign The Model Order That Protects Confidential And**  
6 **Proprietary Information.**

7 The Court should deny Northshore's Motion in relation to Northshore's proprietary  
8 information concerns because Local 66 has explicitly informed Northshore that it is ready and  
9 willing to sign the Model Order found on the United States District Court of Western  
10 Washington's webpage. That agreement alleviates Northshore's baseless concerns about Local  
11 66 sharing Northshore's information with competitors. The Model Order specifically requires  
12 that the parties not disclose any confidential material, meaning that Local 66 is already  
13 specifically barred from sharing such confidential materials with anyone outside the litigation,  
14 including Northshore's competitors. Ex. F. Northshore, however, is unwilling to stipulate to the  
15 Model Order because it wants additional "ATTORNEY EYES ONLY" sections added, but has  
16 failed to state why the sections are necessary. As stated in Local 66's Response to Northshore's  
17 Motion for Protective Order, these sections are both duplicative and unnecessarily restrictive.  
18 The Court should not grant Northshore's Motion as Local 66 is agreeable to the Model Order  
19 that addresses Northshore's stated concern and Northshore's Proposed Order is unduly restrictive  
20 and unnecessary. *See Ford Glob. Techs., LLC v. New World Int'l, Inc.*, No. C15-1329JLR, 2015  
21 U.S. Dist. LEXIS 145775, at 9 (W.D. Wash. Oct. 27, 2015).

22 **CONCLUSION**

23 For the foregoing reasons, the Court should deny Northshore's Motion to Quash or  
24 Modify Subpoenas Duces Tecum.

1 DATED this 6th day of January, 2016.

2 s/Margaret Burnham

3 Margaret Burnham, WSBA No. 47860

4 Robblee Detwiler & Black, P.L.L.P.

5 2101 Fourth Ave, Suite 1000

6 Seattle, Washington 98121

7 Telephone: (206) 467-6700

8 Fax: (206) 467-7589

9 E-mail: mburnham@unionattorneysnw.com

10 Attorneys for Defendant

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Christopher L. Hilgenfeld  
Davis Grimm Payne & Marra  
701 Fifth Ave, Suite 4040  
Seattle, WA 98104

Attorneys for Defendant